EXHIBIT "E"

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ORIGINAL

TINA LINDQUIST,)

Plaintiff,)

vs.) No. 04-249E

HEIM, L.P.,)

Defendants.)

The video deposition of RALPH L. BARNETT, called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Patricia L. Wangler, a notary public within and for the County of DuPage and State of Illinois, at 33 North LaSalle Street, Illinois, on the 6th day of April, 2006, at the hour of 12:00 o'clock p.m.

Reported By: Patricia L. Wangler, CSR

License No.: 084-002417

points today as well as some other documents that I will show to you. I want to see if I can state the gist of your opinion --

A. All right.

Q. -- so that we can have a working knowledge of what that is. Is it your opinion that the foot control that was being used by Tina Lindquist at the time of her injury was defective because it did not have a gate on the front of the foot control?

A. I think that's a complete statement of the -- of my opinion.

Q. In reviewing your report I didn't notice any other areas of defect that you were claiming other than the one I just stated.

A. That's correct, but it is -- with the only thing I would add to that is that I want the same footswitch that was involved in this accident with the addition of the gate because Linemaster makes the -- everything else should be there and the gate also should be -- you know, should be added, and that's part of the testing I did was with the full -- with the Linemaster switch with the gate on it.

Q. So is it fair to say that the opinion, the only opinion that you have expressed so far in your report and the only opinion that you intend to express to a jury and to the court would be the one that I just stated relative to the foot control that was being used by Tina Lindquist being defective because it did not have a gate on the front of it?

A. Right, and whatever ancillary things support that, you know, the -- support that opinion.

Q. And I want to make sure I understand --

A. Because I have done testing and I would want to show them the testing, but it is all based on that one conclusion.

Q. So you are saying that there are other facts --

A. Yes.

Q. -- that you have gleaned that support that opinion, that there is testing that you have performed that supports that opinion. Is there anything else that is ancillary that supports that opinion?

And I want to make sure I include your

single stroke capability you will have a person take it apart, put it into a machine, make the stamp, take the part and put it into a bin that is a good part, somehow will get rid of the scrap, either by blowing on it or falls through. We do that again.

And you sit there like you are part of the machine. The operator becomes part of the machine. Part in, stamp out, part in, stamp out. And you do this so that it's so repetitious that there is no cognitive process going on. You are a part of the infeed, outfeed system of the machine. And so --

Q. In that situation the gated foot control is a bad thing.

A. Oh, my goodness, it will cut down the number of parts you make, you know, to something like -- to 20 percent, 33 percent of what you could make before, your leg wants to fall off, you know, when you do this thing.

If I would show you what you have to do to make a proper stroke with an Allen-Bradley, you would faint. And you would think that the leg that is doing the work wants to fall off, it

is the other leg that is supporting your body.

Q. Supporting your weight, your body, I understand.

A. Ram, ram.

Q. And with that, just so I understand your basis for concluding that those are the -- those gated foot controls are the most inappropriate type of foot control is that it encourages the user to ride the pedal such that their foot remains inside the control so they do not have to fight that gate?

A. That's correct.

Q. Is that fair?

A. That's fair. And you have to remember that they have no special device in the Allen-Bradley to deal with riding the pedal.

I mean so if you ride it, your finger is on the trigger just like you are walking through the woods with your shotgun loaded, cocked and your finger is on the trigger, it is exactly --

Q. I have seen you use that analogy before.

A. Exactly. It works perfectly.

Q. And if something goes wrong as you pointed out before, a sneeze, a lean forward --

A. A startled response.

Q. -- a tremor, that's right, then you -- because your foot is in the control it doesn't make much movement of that pedal and the machine activates and if your hands are in there and if you don't have the point of operation safety device they are coming off?

A. Right.

Q. Have you seen people -- strike that.

Have you seen employers use press brakes in that type of what I will call assembly line setup, part in, stamp out?

A. It's -- they have usually very short runs. The -- there is much more time between the parts. For example, the case that I said to you that I had done before, that you asked for that was either -- it probably wasn't Heim, but it probably was Rousselle which at one time I don't understand the ownership, but I think on a couple occasions Heim owned Rousselle. And there was a machine that does 105 strokes per minute. The -- and so if you have that thing

set up to take full advantage of the machine, in two minutes you make 210 parts.

In the case we have at bar, this woman is making 200 parts in a day, not in 2 minutes, in a day. So you normally on a press brake operation have much more time between parts because you are fussing with it, you are putting it into the machine and you lining things up and you are holding things. It is a -- it is not that routine that I just described.

Q. My question was have you seen employers use press brakes in that assembly line type of process that you described is typically used with a power press?

A. I haven't.

Q. Never seen it?

A. I have never seen it, but that doesn't mean that you can't do it. It is just that I can tell you what typically is done with machines of this kind.

Q. I take it it would be accurate to say that the existence of the gate increases the likelihood of riding the pedal regardless of whether or not it is a press brake or a power

press to some extent?

A. No question about it, no question about it.

Q. Do you know if Tina Lindquist was riding the pedal at the time?

A. I know that she wasn't riding the pedal.

Q. And how do you know that?

A. It is because the machine has a single stroke capability.

Q. I don't follow what -- your explanation. Describe it more for the court please.

A. This particular pedal, the one that was used at the time of the accident has got a locking plate in the back and the machine has a single stroke capability, so that means if you push down on the pedal, you get one stroke and only one stroke and you will never get another stroke on this machine until you fully lift your foot off the pedal at which point it locks.

Q. Even if you have the locking plate pushed back while you depress the pedal?

A. When you push the -- when you push down

A. It is a wonderful thing.
Q. Is it an enhanced safety feature?
A. It is an enhanced safety feature.
Q. What safety features -- I have heard different -- I have read I suppose and heard different people refer to various features as safety features?
A. Yes.
Q. What safety features in your opinion existed on the foot control that Tina Lindquist was using at the time of her incident?
A. She had a guard on the top, she had a guard on both sides, she had a locking plate in the back. She had an orange color, and those are the features that she had.
Q. How about warnings on the foot control, are those considered safety features in your opinion?
A. Well --
Q. And I don't --
A. -- they are considered to be safety features. They are useless, you know, the -- in terms of operational, you know, operational problems because it goes like this, there are

two kinds of human errors, one kind of human error is a mistake. You mean to do something, you, in fact, do it and it turns out later that was the wrong thing, the plant blew up.

Another human error is a slip, you mean to grab the red one, but you grab the blue one instead and that leads to an injury.

Now, the two are very important distinctions because where in the first one you can give a warning sign, you can say here is what we want you to do, you know, the -- so you don't make a mistake. We will tell you what to do so that when you execute properly, it doesn't lead to mischief.

It doesn't help you to put a warning sign on the second one because the person always wanted to grab the right button, they wanted to grab the red one, it was a slip they grabbed the blue one, you see, so that warning sign is no good.

The warning signs they put on the -- on footswitches which with time have become more and more elaborate, are the ones that prevent mistakes, not slips.

Q. How did you determine that the one she was using had a kick plate or a locking plate?
A. I saw a picture of it.
Q. And can you show us that?
A. I think so.
Q. Great. You have given me three --
MR. HARTMAN: No, that's --
MR. ROBINSON: Mr. Hartman, let's not do that. I am asking some questions here of this witness.
MR. HARTMAN: Well, don't confuse him with the one from the office. That's crazy.
MR. ROBINSON: Mr. Hartman, your comments are sanctionable. They are unprofessional.
MR. HARTMAN: Do what you have you have to do, Paul.
MR. ROBINSON: And why don't you be quiet over there while I conduct the discovery deposition. You are being very inappropriate. You are going to be sanctioned.
MR. HARTMAN: Paul, I am going to represent my client as I see fit. If you believe what I do is sanctionable, there is nothing to put on the record. Just go do it.

MR. ROBINSON: It will be done.
BY MR. ROBINSON:
Q. You have handed me two sets of documents.
A. Yes.
Q. Let's mark the first one as Exhibit A and we will mark the second one as Exhibit B because I see they used numbers. It might make that more clear for us.
(Whereupon, Barnett Deposition Exhibits A and B were marked for identification.)
BY MR. ROBINSON:
Q. The first set of documents which you handed me was Exhibit Barnett A, what are those?
A. I have no idea. They are in my file, and there has been no representation made to me about that, about what's on those figures.
Q. Is this the one she was using at the time of her incident?
A. That I can't tell you. I will tell you about the second one.
Q. What do you understand these pictures to be, 11 through 18?

A. I have no understanding.
Q. Have you ever asked anyone as to why they are in your file?
A. I don't think I have asked anyone. They are in my file, but I have no understanding.
Q. I mean why haven't you asked anyone?
A. Well, you can't ask negative questions like that. Don't ask me why I haven't asked anyone. I haven't felt the need to ask anyone.
I am only making you happy. Making you happy is not what I do. You see, I am not interested in making you happy. You don't even enter into my safety analysis of a machine.
But I am here to help you. You asked me for the pictures, I am showing you pictures. Continue asking questions.
Q. Did you want to take a break?
A. No.
Q. You seem to be getting upset for some reason.
A. No, I am -- if I am upset, I am upset because you are playing a game and I don't like games.

actually have statements in the record, I don't know where I read it, but maybe of the other expert reports.

Q. The employees of Corry have indicated they think that it had been discarded at some point.

A. Yes, that's what I read.

Q. We know it was present when Mr. Hartman took these photographs; is that fair?

A. Yes, it is.

Q. And who has represented to you that the foot control -- who, if anyone, has represented to you that the foot control shown in Photograph 29, it is the only one I am concerned with right now because you said it is the only one that confirms the existence of a lock plate --

MR. HARTMAN: Is that the proper term, a lock plate?

THE WITNESS: No, that's good enough.

MR. ROBINSON: That's what he used earlier so --

MR. HARTMAN: You are changing terms. I just wanted to clarify.

BY MR. ROBINSON:

Q. Do you have any problem with that?

A. No.

Q. I thought you used that term.

A. I did use it.

Q. I used the new term "kick plate."

A. Kick plate, lock plate, but the real function is a lock plate.

MR. ROBINSON: Okay, Mr. Hartman, if you could stop asking questions and making statements. Please raise your objection without speaking, and then that's the appropriate way for this to be handled. I am asking that this be handled in the appropriate form and manner. And I am asking for that.

MR. HARTMAN: Paul -- and I will give it to you when it is appropriate to do it in that manner. When there is a question that I have as it relates to your questioning, as it relates to use of terms, I will always interrupt to make sure there is a clarification, if not for the witness' understanding, mine because I do have a right to understand the proceedings as well.

BY MR. ROBINSON:

Q. Has anyone represented to you that the foot control shown in Photograph 29 is the foot control that was being used by Tina Lindquist at the time of her injury?

A. This is what Mr. Hartman represented to me.

Q. Has anyone else besides Mr. Hartman represented that to you?

A. No.

Q. And Mr. Hartman has the machine, the press brake now?

A. Yes, he has it in the plant someplace that he showed to me.

Q. And the foot control is missing?

A. That's correct.

Q. Are you able to tell by looking at these photographs with certainty who the manufacturer of this foot control is that's shown in Photograph 29 and 30?

A. It -- I think that it's -- I don't know what certainty means.

Q. Certainty --

A. As an expert, you know, it looks like a

A. I have no recollection.
Q. You only recall the foot control itself?
A. Yes.
Q. Do many foot controls look alike?
A. I think that the Linemaster has gone to a lot of trouble to distinguish their controls so that they are identifiable just by glancing at them. And, remember, these are all my clients, the foot control people are all my clients so I have a special tendency to pay attention to things like this but not the cords.
What I like is when I see a yellow cord or a colorful cord, I, of course, am thrilled because slip and fall is the second largest producer of death and disabling injury in the world every single year, and falling over these cords is a real problem. I love to see a colorful cord.
Q. The -- what's the model number of the Linemaster foot control with a lock plate?
A. I haven't a clue. That was done by Ulmenstein. The -- and I have not looked at -- I mean I have the catalogues listed in the

report, but that part of the report is written by Ulmenstein.

Q. It is referenced as a 511. Do you have any reason to dispute that?

A. None. I thought the 511 was that group that had those -- that safety kick plate in them so --

Q. That's what I am referring to.

A. Yeah.

Q. You just used the word "safety kick plate," but that's the lock plate that we described?

A. Right, there is no other function, it has no other function except safety.

Q. Okay. Has anyone ever told you that a 511, a Model 511 was sold with the Heim press brake in 1978?

A. As a matter of fact, all the data that I have in the file indicates that Heim has not a clue what they sent out, you know, on the machine.

Q. My -- we will get to that statement. My question was has anyone ever told you that a Model 511 accompanied the sale of the press

brake in 1978?

A. No, no one did.

Q. You don't have any way to confirm that?

A. I have -- to confirm that nobody told me?

Q. No, I am sorry, that's a good point.

You don't have any way to confirm what was -- what model of press -- what model foot control accompanied the Heim press brake at the time of its sale in 1978; do you?

A. That's correct, I can't do it.

Q. Is there any difference in appearance between the Linemaster foot control that has that locking plate and the model that does not have that locking plate besides, of course, looking inside seeing the locking plate?

A. Right, only if you look into the unit can you tell the difference, otherwise they have maintained the same cover and the same geometry.

Q. So if you look in Photograph 30 or any of the other photographs of -- Photograph 30, Exhibit B or any of the other photographs in your file, you would have no way of telling if that's a model with a locking plate or without?

A. Absolutely correct.

Q. Okay. You made a statement that what you have seen is that Heim doesn't have a clue, I think was your terminology, as to what model of foot control accompanied the sale of its press brake in 1978; is that right?

A. Yes.

Q. How do you know they didn't sell one -- that they didn't supply their press brake with a gate that you are claiming is the only reason of defect?

A. Exactly why I made all the inquiries from Mr. Hartman. I said you know that if they supplied one with a gate, I can't be an expert for you because I would have approved of that.

Q. Yeah.

A. And so all of my efforts to find out what they have supplied, you know, have failed, and I fault them for this. I don't like the idea that they don't -- you have a manual, the manual should have in the manual a list, a parts list so that if somebody breaks something and they want to replace it, you have a fighting chance to replace it with the correct thing that

you design.

This manual doesn't have a parts list. I never had a case like this where the manufacturer couldn't tell me what the equipment was that went with the machine. This is the first case I have ever had like this in 32,000 cases.

Q. So you are just assuming in your opinion then that it, one, did not have a gate, and we don't have any way of disproving or proving that; right?

A. Right.

Q. And you are assuming that it had a kick plate because the model that she was using had a kick plate and we don't have any way to prove or disprove that?

A. Well, I have more.

Q. Is that accurate what I said so far?

A. But there is more.

Q. Go ahead.

A. First of all, it has to do with inductive inference, that every machine that I saw in the 70 -- in the '76, '75, '80, all had the Linemaster, every one I ever seen by Heim

with my own accuracy of the things that I wrote let alone to be bothered with his accuracy.

Q. The model number is significant because you would want -- I would think if a company either that you represented in the past or that I am presently representing is sued for an accident, you would want to make sure on the plaintiff's side that that foot control was the same one that was accompanying the sale; is that right?

A. Absolutely not, absolutely not. Expert witnesses, we don't make evidence. We only report things that people tell us. We -- if we were on the scene of this accident, then we would be, you know, fact witnesses and we could tell you.

But we are always receiving things. We don't add -- we don't add evidence to a file. When -- we are never the ones that see anything.

When we have in the file drawings that have these numbers on it, which I have seen a drawing of this and then I read later on that it has been disclaimed by the Heim representatives and say, we -- you know, yeah, we gave you the

drawing, but we don't know whether that's the drawing or not. The file has got a lot of confusion in it because people are furnishing things and then disclaiming later or, you know, making statements later that we just don't know.

And I don't criticize them for telling the truth. If they don't know, they should say they don't know, but no numbers were made up.

They are in our file. And if they are used inappropriately, it is because somebody has made a decision that, gee, they wouldn't have sent us a drawing unless that was the drawing that they sent out.

Q. If -- where are the facts, any facts that you have seen that indicate that the foot control that Tina Lindquist was using is the same one that was supplied with the press brake in '78?

A. I have no facts like that.

Q. Okay. I see what you are saying.

A. I told you all the elements that I have got.

Q. Who made the decision then if we don't know what model was supplied with the press

brake in '78, who made the decision that this reference to the 532 is incorrect? How can you determine it is incorrect if you don't know the right answer?

A. Well, I was under the impression that the -- that that model number refers to a unit that has no kick plate.

Q. And who told you this?

A. I am -- I think that is part of the discussions with Matt Ulmenstein.

Q. And Mr. Hartman, right?

A. I don't remember Hartman being involved in that.

Q. You don't remember Mr. Hartman being there?

A. No, not being involved in discussions of that kind.

Q. Okay. Well, who made -- how could there have been a decision made that the reference to the 532 was in error if no one knows what number actually accompanied the machine in '78?

A. It is very simple. If you take a look at the unit with the kick plate, and you look at

the catalogue, you can say, wait a minute, that number doesn't go along with the kick plate, that's not -- you know, in the series that has the kick plate in it.

Now, remember, Ulmenstein is the contact with Mr. Hartman. They talk all the time. I very seldom talk to Mr. Hartman.

Q. I understand.

A. When he comes to Chicago, you know, I talk to him, but he has been here twice.

Q. Do you know how the decision was made to reference the -- to change or at least to attempt to change this reference to the 532 model as being supplied with the machine in 1978?

A. I have no idea. I just know that the -- you know, when we issue a report like this, we make the statement, this report contains initial opinions, we reserve the right to amend this report in the face of further information.

That's what Ulmenstein is doing is he now feels that this is not accurate so he is going to make a change in that. It is a report

Q. Did you indicate in here that striking the ski nose hard with a flat toe shoe will almost always defeat the liftable gate and allow a one motion activation?

A. Yes. The emphasis is on the word "hard."

Q. I am just asking did you include that sentence?

A. I did.

Q. And a hard -- a hard strike will almost always defeat the lift gate?

A. Yes. And then the last one contains a similar observation.

Q. Where? Where it says as a practical matter?

A. Yes.

Q. The ski nose enabled the process to be accomplished using a single forceful motion?

A. Yes. This is not speculation. I watched my students doing this.

Q. Should this machine, this press brake as it was used by Corry have been equipped with a point of operation safety device?

A. When it was sent out from Heim?

Q. No, sir. Well, sure, yes. I think I know your answer to that.

A. When it was sent out to Heim, the answer is no.

Q. Should it have had one at the time of the incident?

A. Yes.

Q. Would it be a misuse of the machine not to have a point of operation safety device?

A. It depends on the circumstances because there are some operations on a press brake where you can't use any point of operation.

Q. I am referring to the one that Tina Lindquist was using, would it be a misuse of that press brake to use it as Tina Lindquist was using it without a point of operation safety device?

A. Based on the information that I have at my disposal, I think it is a misuse of the machine not to have a point of operation safety device.

Q. And regardless of the type of foot control that was in -- that was used, if the machine -- if the press brake had a point of

operation safety device, this accident could not have happened; is that accurate?

A. If the -- if I have the full understanding of how this accident happened, what was --

Q. Sure.

A. -- being done, then there is a point of operation device that could have prevented this accident.

Q. Do you consider a two-palm switch -- by the way, do you refer to them as two-palm switches?

A. Yes.

Q. Do you refer to a two-palm switch as being a point of operation safety device?

A. What I do is I -- you know, it is a hostage control, and it can be used as a -- as a safety device. And it has got -- you need to do a few things to make it, you know, to make it work, but it is -- you know, if the machine has got the right circuitry and it is located far enough from the machine, then releasing either one of the buttons while it is exercising the dangerous part of the stroke will freeze it and

you can't have the accident.

Q. Did you know that this press brake, that Corry had installed a two-palm button switch on Heim press brake?

A. Yes, and I examined that control.

Q. Would the use of that control have prevented this accident?

A. I think so if it was located far enough from the machine, not super far but --

Q. Because it would have precluded her hands from being in the ram area and would have required her hands to be on the buttons I take it is how that works; is that right?

A. That's right. I am now -- you know, the -- the way she has described it. That doesn't mean a third-party can't do something. You know, there is other scenarios.

Q. Sure. And I am referring to specifically the manner in which she was injured.

A. Right.

Q. The use of that two-palm button switch would have prevented that?

A. I think so.

Q. Did you know that the -- that Corry installed a light curtain on the press brake after the accident?
A. Yes.
Q. It is actually shown in the 29, 30 photographs of Exhibit B?
A. Yes.
Q. And did you know that they continued to perform this particular part process that Tina Lindquist was using at the time of her injury with the use of that light curtain?
A. Right.
Q. And do you consider -- do you call them a light curtain?
A. Yeah, I do.
Q. And is a light curtain a point of operation safety device?
A. Yes.
Q. Would the use of that light curtain have prevented Tina Lindquist's injury?
A. With the same proviso, if it is set up properly --
Q. Sure.
A. -- then it will do the job.

Q. And they set it up properly after the accident; didn't they?

A. I don't know whether they set it up properly, but they -- that light curtain that I saw can be set up properly so that you won't have the accident.

They need to do a lot of things. You have got to make sure just like with the two-hand controls and the light curtain, you have to make sure that the Heim press follows orders so that when you tell it to stop, it, in fact, will freeze the ram, you know, without too much drift. And so if you can do that, then this will -- this can become a component of a proper two-hand control which could have prevented the accident.

Q. If -- if there was an ungated foot control on this press brake with appropriate point of operation safety device, a light curtain and a -- the use of a two -- strike that.

If there was an appropriate point of operation safety device and there was an ungated foot control being used on this Heim press brake

being used by Tina Lindquist, would you still consider the foot control to be defective?

A. Oh, certainly, but that doesn't mean that you will have an accident.

Q. Is it your opinion that an ungated foot control is defective when in use on any press brake?

A. I can't tell you any press brake, but the -- and I don't think I only want to talk about the business of the gating because I want to talk about specifically the Linemaster with the locking plate and the front gate, the -- that or something equivalent should be on every single press brake, the -- that's a general purpose press brake.

Q. I know. This case here concerns you have indicated this one had a locking plate, so that's not an issue for your testimony. And now we are talking about the only opinion you have expressed today being that you think it is defective because it didn't have a gate. So I need to focus on that.

A. Yeah, but what my problem is -- it is not much of a problem, but when you only talk

foot control without a locking plate would not be defective on a power press? Have you ever testified to that?

A. I have advocated the -- that gates not be used on power presses for certain kinds of -- for certain kinds of -- you know, of footswitches, so I am actually -- you know, advocated the thing and published it and so forth. I have the publications here that won't let you do it.

Q. That say that a foot control is actually more dangerous with a gate?

A. That's right, and this is a -- that has to do with the punch press. And it has nothing to do with a press brake.

Q. Unless the punch press is used similar -- excuse me, unless the press brake is used in a similar fashion as a punch press, is that right?

A. Well, I don't know how this is going to be used in a similar fashion to the -- you know, to the units that I am talking about because I am talking about fast machines that are full revolution machines and this thing here is a

partial revolution machine that is slow motion compared to the -- you know, to -- to punch presses and has -- the general purpose of the machine has you migrating and spending lots of time between strokes.

The -- it is a completely different animal, and I thought one of your witnesses did a wonderful job of educating you on the differences between the two machines.

Q. Is a -- is riding the pedal the most prevalent cause of accidental activation of power presses?

A. Yes.

Q. And is it true that the more difficult it is to step into and out of a foot control the more likely it is that operators will ride the pedal?

A. Yes.

Q. Is it also true that the -- that 85 percent of all machine accidents are caused by the user and only 5 percent of machine accidents are caused by the machine?

A. Yes. Those were the statistics that I have published.

Q. And as I mentioned to you --
A. They change --
Q. -- you try to draw your comments into one transcript for use?
A. I think you are accurately representing it.
Q. Have you ever taught at any other location other than the institute here in Chicago?
A. You mean with over 300 seminars around the world?
Q. So there are other times where you have taught?
A. Yes.
Q. And you have taught the industry as well I think?
A. Yes.
Q. Have you ever taught the industry that using an ungated foot control is defective on a press brake?
A. I don't think I have addressed that issue at all.
Q. Have you ever taught in your -- how long have you been teaching at the -- in

Chicago?

A. 47 years.

Q. Have you ever taught in your courses that using an ungated foot control on a press brake is defective?

A. Probably. The -- because what I am trying to do is minimize accidental activation, and I would have gone through with my class all of the different schemes that we now know about for minimizing accidental activation.

Q. As you sit here today, sir, do you ever remember teaching a class and indicating that the use of an ungated foot control in a foot brake is defective?

A. I don't really think the -- I have ever stated it in that way.

Q. Have you ever written that opinion -- because that's the opinion you have here in this case?

A. Right, right.

Q. Have you ever written on that opinion before?

A. No, I think all the things I have written about are power presses, not press

brakes.

Q. You have never written on a press brake?

A. I have never written about this on a press brake.

Q. You wrote about foot controls you said with use on press brakes or power presses?

A. No, the things that I have done are general. My work on -- is human factors work on foot controls which allow you to apply this stuff to any machine.

Q. That's my point. You have written on the use of foot controls on any machine which would include press brakes; is that fair?

A. That's right.

Q. Okay. Have you ever written that the use of ungated foot control on a press brake is defective?

A. No, you see in here I don't take any machine -- on any of these things I have not taken a machine and said for this machine this is the one you have to use. I have not done that on press brakes.

Q. Would it be fair to say that in

(Whereupon, Barnett Deposition Exhibit F was marked for identification.)

BY MR. ROBINSON:

Q. We have located some publications from OSHA, safeguarding equipment in protecting workers from amputations, have you ever seen this before?

A. No.

Q. Where they actually give a -- what they have quoted as a properly guarded foot control and there is some discussion about --

A. For what machine? And how is it configured?

Q. Have you ever seen this before?

A. I have seen that picture before but not in this document, and they can't make a statement like that if you don't talk about the machine.

Q. Okay. Do you know that OSHA investigated this?

A. I did hear that they did. I thought there was a citation for not having a point of operation device.

Q. Would you agree with that?
A. I would.
Q. If you were testifying for the manufacturer, that would be something that you would be pointing out, that it would have been the employer's responsibility to have included a point of operation safety device?
A. I am testifying for the plaintiff and I am saying it. I don't represent -- I represent the field of safety. I don't care whether it is plaintiff or defense. I represent the truth.
Q. So you would be regardless of who you are representing indicating that it was the employer should have had an appropriate point of operation safety device on this press brake?
A. Absolutely. On this particular operation, absolutely.
Q. Do you know why she wasn't using the two-palm button switch?
A. Yes, I do.
Q. Why is that?
A. Because her employer had told her to do this hand thing, had used the switch and said -- which would -- you know, a supervisory switch

A. Right, absolutely.
Q. That's not the way Tina Lindquist's injury occurred; is it?
A. Of course not. It has nothing to do with that.
Q. Is there any similarity in the test that you conducted and the manner in which Tina Lindquist was injured?
A. None whatsoever. That's not what the test was for.
Q. Did Tina Lindquist ever tell you that she accidently put her foot into the foot control?
A. She didn't tell me anything.
Q. Did you ever read anything in her testimony that indicated she accidently put her foot into the foot control?
A. I don't recall her saying that. I think she said she wasn't riding the pedal and had taken her foot out of the control and then -- but I don't recall her saying anything about what she did. I don't know that she knew what she did.
Q. Have you assumed -- but you have

assumed that she accidently put her foot into the foot control; haven't you?

A. That's much of an assumption, you know, the --

Q. Isn't --

A. But that is an accurate statement when you have a one-parameter system.

Q. Do you have any factual evidence or support that she -- other than your assumption do you have any actual evidence, testimony, eyewitness, her, that says that she accidently put her foot into the foot control?

A. The -- yes, we -- I have her accident that she had an accident with a foot control and there is only one way to do it, you have to step onto it.

Q. Do you have any actual factual evidence that she accidently with her foot located outside of the foot control, she accidently stuck it into the foot control and activated the foot pedal?

A. No, I don't.

Q. For that to have occurred -- are you assuming that's what occurred?

A. Yes.

Q. And for that to have occurred she would have had to accidently stuck her foot the entire way in such that she activated that lock plate that you mentioned; right?

A. Absolutely right.

Q. Has she ever told you that she stuck her foot all the way in and actuated that kick plate?

A. Everything we know about her we will have to get from her deposition because I didn't interview her.

Q. Okay. And her deposition testimony did not indicate that she stuck it all the way in and hit that kick plate?

A. Right, I don't think she knows.

Q. Well, did you see that she has indicated she did not accidentally put her foot into that foot control?

A. I don't think she said that either.

Q. Do you have your summary of the --

A. Unfortunately --

Q. Of her testimony?

A. I don't have the summary, and I didn't

have the deposition to rereview last night.

Q. Suffice it to say you have not seen the deposition of Gary Dietz?

A. Correct.

Q. Gary Merkle?

A. Correct.

Q. Kevin Messenger?

A. Correct.

Q. Joel Nichols?

A. Correct.

Q. Jan Oviat?

A. Correct.

Q. Dave Phillips?

A. Correct.

Q. Robert Rooney?

A. Correct, he was the setup man; wasn't he.

Q. Or her husband?

A. Wasn't Rooney the setup man?

Q. Yes, for her husband?

A. Correct.

Q. Who she said trained her?

A. I don't remember that.

Q. I guess you wouldn't have if you didn't

MR. ROBINSON: There is no need for us to talk about it.

(Recess taken.)

THE VIDEOGRAPHER: Back on the record at 3:47 p.m.

BY MR. ROBINSON:

Q. Sir, have you ever designed a foot control for either a punch press or a press brake?

A. I am hesitating because I did some research on the design or evaluation of a design for someone else, but I think the most direct answer is no, but there has been proposals for foot controls and patent work and I have reviewed those professionally.

Q. When a proper point of operation device is used, are all foot controls equally safe?

A. If the -- if the -- if a proper one is used, they all are equally safe because they are -- just activation means and you don't need to have any safety at all.

Q. So had the employer used an appropriate point of operation safety device, the foot control that she was using at the time of the

incident would have been safe?

A. Absolutely. You are, of course, focusing on her accident and not on all things that can happen.

Q. Yes, that's for our purposes today and in this lawsuit that's what's significant.

What is an arch press?

A. It is -- just -- it is a frame, and it has to do with how the frame is made on the press, but it has no special attributes other than that.

Q. Is it -- does it fall under the category of a punch press or a press brake?

A. Punch press.

Q. Do people -- do users use punch presses in ways that are -- let me back up and preface my question. You are talking about the differences -- let me ask it even more generally.

What is the difference between the punch press and the press brake relative to your comment that you need a gated foot control on the press brake and you don't need a gated foot control on the punch press?

A. The --

Q. Please list all of the differences that are relevant in your consideration.

A. Well, the punch press, there is a need to rapidly stroke -- make rapid cycles and so the -- there is very little time if you set it up correctly for taking apart, putting it into the machine, making the press, removing the part and then starting that cycle over, so there are very short cycle times on punch presses and very long cycle times relatively speaking on press brakes.

The -- if you have short cycle times, it takes time to get your foot out and place it on the ground properly. It is much faster if you can ride the pedal. The --

Q. What was the activation times for Tina Lindquist?

A. It is 35 strokes per minute on her machine. The -- it is about half of the average punch press.

Q. How quickly was she applying the -- how frequently was she applying the foot control?

A. I don't think I can tell you. I just

the pedal up against the back plate so it is in a perfect position for you to activate the press.

Now, you take your foot off, you have already got an equilibrium position established where your foot is all the way into the pedal, an activating position.

Q. Do you know if her foot would have been able to be inside the foot control and not necessarily resting on the pedal?

A. It would -- it can go inside, not rest on the pedal at all and just in one stroke which is what you will see my people doing and one stroke you hit the back plate and push down simultaneously.

Q. I am saying the possibility also exists that she had her foot inside the foot control, not actually resting on the pedal so she doesn't have that friction --

A. Just dangling in the air?

Q. Dangling inside the housing --

A. Yes.

Q. -- and that by leaning forward she does the same thing, activates the kick plate, that

is a possibility; isn't it?

A. That is a possibility that she can do that. It is the -- if you have the gate on the front, the -- you can't stop somebody that has opened up the gate, put their foot in there, poised the thing in a position that you just described, then you bypassed all of the safety devices we are talking about, so you are ready to -- you know, you are ready to go ahead and make a stroke. It is almost everything you have done is advertent to make a stroke.

But if you are not making a stroke and you take your foot out and don't have the plate resting on your foot, you know, which is not a desirable thing to have a plate resting on your foot, the -- then you are outside, you are not going to get in. I don't care what you do, you won't get in unless you are advertently getting in.

Q. Would you agree that if she was riding the pedal, if her foot was inside the foot control and for whatever reason her foot voluntarily moved -- involuntarily moved forward and hit that kick plate, accidently activated

the pedal, that the gate would be meaningless -- the absence of a gate would be meaningless?

A. Oh, right, because she has already bypassed the gate. In order to do -- what you have done with your question is you have eliminated the gate and then we start off with no gate.

She has already opened the gate, put her foot into the thing, and she is now -- if she is contacting the pedal at that point, leaning forward is not going to get her up against that plate.

That's just like being on the floor, just because you lean forward, your foot doesn't slide forward when you do this, it would be stabilized. So she needs to do something which is really weird, she is lifting up on the gate and balancing the gate upward and she has got her foot off the pedal, so she actually has -- supporting the weight of the gate on a foot that's not on the pedal itself to ride it. And then because she moves forward she now, you know, activates the thing. It is just too many unlikely things.